

1 **HOOPER, LUNDY & BOOKMAN, P.C.**
2 GLENN E. SOLOMON (State Bar No. 155674)
3 PETER J. BRACHMAN (State Bar No. 248805)
4 1875 Century Park East, Suite 1600
5 Los Angeles, California 90067-2517
6 Telephone: (310) 551-8111
7 Facsimile: (310) 551-8181
8 E-Mail: gsolomon@health-law.com
9 E-Mail: pbrachman@health-law.com
10
11 **MCCORMICK BARSTOW LLP**
12 MARSHALL C. WHITNEY (State Bar No. 82952)
13 TIMOTHY J. BUCHANAN (State Bar No. 100409)
14 7647 N. Fresno Street
15 Fresno, California 93720
16 Telephone: (559) 433-1300
17 Facsimile: (310) 433-2300
18 E-Mail: marshall.whitney@mccormickbarstow.com
19 E-Mail: tim.buchanan@mccormickbarstow.com

20 *Attorneys for Plaintiff Saint Agnes Medical Center*

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **COUNTY OF FRESNO**

23 SAINT AGNES MEDICAL CENTER, a
24 California non-profit organization,

25 Plaintiff,

26 vs.

27 SANTÉ COMMUNITY PHYSICIANS IPA
28 MEDICAL CORPORATION, a California
professional corporation; and DOES 1 TO
100,

Defendants.

CASE NO. 13CECG03308

COMPLAINT FOR:

1. INTENTIONAL INTERFERENCE
WITH CONTRACT – BLUE
SHIELD AGREEMENTS
2. INTENTIONAL INTERFERENCE
WITH CONTRACT – FIRST
CHOICE AGREEMENT
3. INTENTIONAL INTERFERENCE
WITH PROSPECTIVE
ECONOMIC ADVANTAGE
4. NEGLIGENT INTERFERENCE
WITH PROSPECTIVE
ECONOMIC ADVANTAGE
5. UNFAIR COMPETITION
6. DECLARATORY RELIEF

FILED
OCT 22 2013
SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO
BY _____ DEPUTY

1 Plaintiff Saint Agnes Medical Center ("Saint Agnes") alleges as follows:

2 1. This lawsuit arises from the improper attempts by Defendant Santé Community
3 Physicians IPA Medical Corporation ("Santé") to prevent Fresno area members of health plans
4 (e.g., Blue Shield, Anthem, Aetna, Health Net, United, CIGNA, etc.) who are enrolled in health
5 maintenance organizations ("HMOs") from signing up with the physician of their choice, or
6 accessing hospitals other than the one preferred by Santé. Specifically, Santé enters into contracts
7 with physicians that expressly state and represent the contracts are non-exclusive. But when a
8 physician attempts to sign up with other entities that could provide services to HMO patients,
9 Santé has swiftly threatened to redirect away from that physician all of the HMO patients who
10 otherwise have selected and/or have the right to choose to use the physician for medical services.
11 These threats are contrary to the physician contracts, misrepresent the rights of the physicians
12 under the contracts, and impede patient access and choice.

13 2. The results of Santé's improper threats and actions include destroying the doctor-
14 patient relationship with these health plan members, preventing any other medical group or other
15 entity from rendering services to HMO health plan members, and preventing patients or
16 physicians from using a hospital other than the one preferred by Santé. In short, Santé is using its
17 dominant market position in the Fresno HMO market to prevent anyone from competing with
18 Santé for HMO business, to the detriment of patients, physicians, employers, as well as to the
19 detriment of Saint Agnes. The conduct by Santé demonstrates that it does not want Fresno area
20 residents to have choices where to receive medical services, and is not content to compete for
21 HMO business through lawful means.

22 3. Santé has delivered ultimatums to physicians in letters, telephone calls, and in
23 meetings. The message is clear: stick with us or we will take away all of your HMO patients.
24 Santé has threatened to take away all patients from primary care physicians who join any other
25 entity that can provide HMO services in the Fresno area, and told specialists that they will receive
26 no referrals – not a single one – if they join any other such entity. The net result is the same:
27 physicians are being bullied into maintaining an exclusive relationship with Santé even though the
28 contracts expressly provide for non-exclusivity.

Plaintiff

5. Plaintiff Saint Agnes is a faith-based non-profit corporation that operates a 436-bed acute care hospital located in Fresno, California. Saint Agnes has been recognized as the leading hospital in the Fresno area. Among many other awards and accolades, Saint Agnes received the 2013 Healthgrades Maternity Care Excellence Award (for the 7th consecutive year), was voted Best Hospital for the 9th consecutive year in the Fresno Bee's Central Valley's People's Choice Awards, and has received the National Research Corporation Consumer Choice Award for the last 18 years.

6. Plaintiff is informed and believes that Defendant Santé Community Physicians IPA Medical Corporation is a California professional corporation whose principal place of business is Fresno, California.

7. Plaintiff does not know the true names or capacities, whether individual, corporate, associate, or otherwise, of defendant DOES 1 through 100, and therefore designates those defendants by such fictitious names. Each of the defendants sued herein as a DOE is legally responsible in some manner for the events and happenings referred to and proximately caused the injuries suffered by plaintiff. Plaintiff reserves the right to amend this Complaint to allege the true names and capacities of these DOES when the same becomes known to it.

The Managed Care System

8. There are a number of HMOs that offer Commercial and/or Medicare health care coverage to people who live or work in the Fresno area, such as Blue Shield, Anthem Blue Cross,

1 United Healthcare, Aetna, Health Net, CIGNA, and others. When a patient signs up for one of
2 these HMO plans, he or she must select a primary care physician (or "PCP"), who acts as a
3 gatekeeper for the patient's care. The primary care physician may treat the enrollee, or where
4 necessary, may refer the enrollee to a specialist. When the enrollee needs hospital care, the
5 primary care physician or specialist typically arranges for the hospital at which the services will be
6 rendered.

7 9. The main HMOs operating in the Fresno area have contracts with Santé to provide
8 those HMOs with access to a panel of primary care physicians that the HMO members can select,
9 and specialists that the HMO members can access when their primary care physicians recommend
10 it. Santé currently requires all of its contracted physicians to use Community Medical Centers
11 (which comprises Clovis Community Medical Center, Community Regional Medical Center, and
12 Fresno Heart & Surgical Hospital) whenever possible – *e.g.*, non-emergency situations, etc. Santé
13 typically does not allow its contracted physicians to use Saint Agnes for HMO patients that have
14 selected Santé to be the entity through which these patients access their selected primary care
15 physicians and specialists.

16 10. Santé currently has cornered and dominates the HMO market in the Fresno area.
17 Consequently, there is pent up demand in the Fresno area among HMOs, physicians, employers,
18 and patients for other options, which would allow HMO members to select physicians who are in
19 an entity other than Santé, and allow them to choose to receive treatment at Saint Agnes. Indeed,
20 prior to 2001, there was a robust market for HMO members who selected to get HMO services
21 through a large HMO that allowed patients to go to Saint Agnes. However, in or about that year,
22 Santé entered into a transaction with that HMO to get all these patients transferred from another
23 Fresno area medical group to Santé, which effectively forced that medical group out-of-business,
24 and killed HMO competition in the Fresno area from that day to now.

25 11. There now are at least two entities, unrelated to one another, that have attempted to
26 enter the Fresno HMO market offering patients the option to use Saint Agnes, both of which
27 would provide an alternative to Santé for HMO care, and both of which now are under an assault
28 through unlawful means by Santé, as summarized below.

1 12. First, there is Saint Agnes Medical Group, Inc. ("SAMG"), which is a medical
2 group. Plaintiff is informed and believes that SAMG has entered into a contract with Blue Shield
3 to provide HMO services to Commercial and Medicare patients. Plaintiff is informed and believes
4 that SAMG also has entered into contracts with a number of Fresno area physicians, and actively
5 has been seeking to contract with other Fresno area physicians and other health plans. Blue Shield
6 also has entered into an agreement with Saint Agnes for Saint Agnes to provide HMO services to
7 Commercial and Medicare patients. This means that Blue Shield members who select primary
8 care physicians that are contracted with SAMG will be able to allow those members to use Saint
9 Agnes for their HMO hospital care.

10 13. Second, there is Choice Physicians Network, Inc. ("CPN") and First Choice
11 Medical Group ("FCMG") (collectively, "First Choice"), which are entities unrelated to SAMG.
12 CPN is itself a type of health plan licensed under the Knox-Keene Health Care Service Plan Act of
13 1975 (the "Knox-Keene Act"), commonly referred to as a limited license health plan. FCMG is a
14 pre-existing medical group that contracts with CPN. CPN, itself an HMO, already has contracts
15 with all of the major HMOs operating in the Fresno area, including Blue Shield, Anthem Blue
16 Cross, United Healthcare, Aetna, CIGNA, Health Net, etc., for CPN to take the financial risk from
17 these other major HMOs on a delegated basis for their HMO patients. CPN's status as a limited
18 license health plan means that it has the option to contract with physicians to provide HMO
19 services either directly, or by having those physicians contract with FCMG, because there also is
20 a contract between CPN and FCMG. Plaintiff is informed and believes that one or both First
21 Choice entities also recently entered into contracts with a number of Fresno area physicians, and
22 also is in the process of recruiting other Fresno area physicians. CPN also has entered into an
23 agreement with Saint Agnes. This means that HMO members of all of the HMOs currently
24 contracted with CPN who select primary care physicians that also are contracted with CPN or
25 FCMG will be able to allow those patients to use Saint Agnes for hospital care.

26 14. It is common in the industry for physicians to join more than one entity that
27 contracts with an HMO. For instance, plaintiff is informed and believes the contracts between
28 Santé and its physicians expressly confirm that Santé physicians are non-exclusive providers to

1 Santé, and allow them to provide professional medical services to the physicians' own patients, or
2 to patients of other physicians, medical groups, or entities. Plaintiff presumes that Santé included
3 this express non-exclusivity to avoid the appearance of being a monopoly or otherwise having
4 dominant market power.

5 15. Yet, when primary care physicians contracted with Santé have attempted to enter
6 into contracts with competing entities like SAMG or one of the First Choice entities, plaintiff is
7 informed and believes that Santé has threatened to destroy the relationship those physicians have
8 with their existing Santé patients, by re-assigning those patients to other Santé physicians.
9 Likewise, plaintiff is informed and believes that Santé has told its contracted primary care
10 physicians, and its contracted specialists, that the primary care physicians will not be allowed to
11 refer members to specialists contracted with Santé if those specialists also contract with SAMG or
12 either of the First Choice entities, or contract with anyone else.

13 16. Santé's actions not only are interfering with the rights of the primary care
14 physicians, specialists, patients and HMOs, but also with Saint Agnes' contractual rights, and Saint
15 Agnes' prospective economic relations, by preventing any competing HMO choices in the Fresno
16 area for patients, employers, primary care physicians, specialists, or HMOs.

17 **Santé's Campaign Of Retaliation And Intimidation**

18 17. When Santé found out about the activities of SAMG and the First Choice entities,
19 plaintiff is informed and believes that Santé implemented an aggressive campaign of retaliation
20 and intimidation against physicians, to maintain *de facto* exclusive control over the HMO business
21 in the Fresno area, despite only having non-exclusive contracts with the primary care physicians
22 and specialists that form the backbone of Santé's HMO business.

23 18. If Santé suspects that any physician has joined another entity – or is interested in
24 doing so – plaintiff is informed and believes that Santé threatens him or her with a false choice:
25 either stay exclusively with Santé, or Santé will take away all of your existing HMO patients that
26 currently also have selected both you and Santé. In other words, the punishment for allowing any
27 HMO patients to select a Santé contracted physician who also is contracted with a different entity
28 will result in immediate loss of all other HMO patients who previously have selected and/or been

1 allowed to see these physicians.

2 19. The physician-patient relationship between an HMO member and his or her
3 primary care physician is the very cornerstone of the member's HMO medical care. Santé's
4 conduct threatens to rip that relationship apart, simply because of Santé's desire to prevent or
5 remove any potential competitors in the marketplace for HMO patients. Likewise, plaintiff is
6 informed and believes that HMO patients form a strong physician-patient relationship when they
7 get treated by a physician who is a specialist, and that these HMO patients view their provider,
8 rightly so, to be the independently contracted specialist, not Santé.

9 20. Plaintiff is informed and believes that Santé also has coupled its threats to
10 physicians with misstatements about what the contracts between Santé and physicians require.
11 For example, although these contracts are nonexclusive, plaintiff is informed and believes that
12 Santé has told physicians they are required by their contracts to have HMO members only access
13 the physicians through Santé if the physicians are signed up with more than one IPA that has a
14 contract with an HMO. Plaintiff is informed and believes that Santé's contracts with its physicians
15 contain no such term despite Santé's representations to the physicians saying otherwise.

16 21. Moreover, Santé's threats are not limited to severing the physician-patient bond
17 where Santé and the competing entity are both contracted with the patient's health plan. The threat
18 extends more broadly to the physicians losing all of their HMO business. For instance, if a
19 primary care physician contracted with Santé allows a Blue Shield member to select the physician
20 along with SAMG, then Santé will reassign all of that physician's HMO members from all health
21 plans, not just from Blue Shield. Since SAMG does not yet have contracts with these other health
22 plans, the result of Santé's threat will be to strip the supposedly non-exclusive physician of all the
23 HMO members that have selected him or her, without those members having any means to choose
24 that physician through another medical group, and with no way for the physician to offer to see
25 those HMO members – except to abandon SAMG. In this way, Santé seeks to keep the Fresno
26 area HMO market entirely locked up, even while promising its contracted physicians that they
27 have non-exclusive agreements.

28 22. Plaintiff is informed and believes that Santé's threats would cause financially

1 devastating results to the threatened physicians, who derive a substantial portion of their income
2 from patients who currently have or selected or could select them along with the Santé medical
3 group.

4 23. Aside from telephone calls and meetings, plaintiff is informed and believes that
5 Santé has sent letters to primary care physicians forcing them to choose between staying with
6 Santé or joining another entity – *i.e.*, *de facto* exclusivity. For instance, plaintiff is informed and
7 believes that one template letter sent by Nick De Benedetto at Santé to primary care physicians
8 who signed up with other entities, reads as follows:

9 Please make your election for member assignment, and sign below:

10 _____ Continue to obtain membership from Santé Community Physicians.

11 _____ Begin receiving membership from another IPA. Please begin the
12 disenrollment of my assigned members enrolled through SCP.

13 24. Aside from intimidating primary care physicians, Santé is also threatening
14 specialists with a cutoff in referrals should they join another medical group. For example, on
15 October 3, 2013, plaintiff is informed and believes that Santé caused one of its contracted primary
16 care physicians to send a letter to multiple specialists, which stated in pertinent part:

17 Thanks for taking care of the patients we have referred to you in the past!

18 I have discovered that you are "Intent on providing great care" with the Saint
19 Agnes Medical Group through a brochure that was recently distributed in the
Fresno area.

20 Unfortunately, we at Logan Street Medical Group will no longer be able to refer
21 patients to you as we are part of the Sante IPA and our patients are in the midst of
choosing their healthcare plan for the upcoming year.

22 Should this be in error, I would certainly like to be updated as soon as possible for
23 the sake of our patients and their families.

24 25. Plaintiff is informed and believes that Nick De Benedetto from Santé has also
25 delivered the same message orally to physicians.

26 26. The timing for these intimidation tactics is particularly critical right now because
27 the standard annual open enrollment period for Commercial HMO members typically occurs in the
28 Fourth Quarter – *i.e.*, between October and December. Similarly, the open enrollment period for

1 Medicare Advantage HMO members is a precisely defined limited period – *i.e.*, October 15
2 through December 7. As a result of these open enrollment periods, this also is when physicians
3 are most likely to be considering whether to contract with entities that could provide HMO
4 services. This means the deadline for patients and physicians to make their choices is now, and
5 the window for these decisions to be made for the coming year is fast closing.

6 **Santé's Campaign Is Interfering With Plaintiff's Contractual And Economic Relationships**

7 27. Plaintiff is informed and believes that the goal of Santé's campaign of intimidation
8 and threats is to destroy all actual and potential competition before the end of the impending
9 deadline for 2014 enrollment, and beyond.

10 28. Plaintiff already has suffered damage at the hands of Santé. For instance, plaintiff
11 is informed and believes that at least one physician who had executed a contract with SAMG
12 subsequently terminated that contract after Santé threatened to take away all of his HMO members
13 and preclude HMO patient referrals.

14 29. Similarly, plaintiff is informed and believes that many other doctors who have said
15 they would join SAMG, subsequently stated that they will only take the ultimate step of signing a
16 contract once they are sure that they will not be retaliated against by Santé.

17 30. Saint Agnes' efforts to contract with health plans also has been damaged. For
18 instance, during the course of negotiations between Saint Agnes and Blue Shield, the parties were
19 negotiating an expanded relationship that would have been more lucrative for Saint Agnes.
20 However, due to Santé's campaign of threats, SAMG has not been able to recruit specialists in
21 several specialty areas of medical practice. For that reason, Blue Shield told Saint Agnes that Blue
22 Shield would not agree to the expanded relationship for now, instead only entering into a contract
23 for a more limited relationship. This is damaging to Saint Agnes because such an expanded
24 contractual relationship would have provided Saint Agnes with greater access to treating Blue
25 Shield HMO patients.

26 31. Plaintiff is informed and believes that SAMG's efforts to contract with health plans
27 have similarly been damaged. For instance, plaintiff is informed and believes that SAMG and
28 Blue Shield were negotiating an expanded relationship for commercial patients that would have

1 been more lucrative for SAMG. However, due to Santé's campaign of threats, plaintiff is
2 informed and believes that SAMG has not been able to recruit specialists in several specialty areas
3 of medical practice. For that reason, plaintiff is informed and believes that Blue Shield told
4 SAMG that Blue Shield would not agree to the expanded relationship for now. This also is
5 damaging to Saint Agnes because such an expanded contractual relationship would have provided
6 SAMG with greater access to signing up Blue Shield patients, which would have allowed more
7 Blue Shield patients to receive treatment at Saint Agnes.

8 32. Santé also has interfered with the existing contracts that Saint Agnes and SAMG
9 have with Blue Shield. Specifically, by preventing SAMG's recruitment of physicians, Santé has
10 limited further the ability of Saint Agnes and SAMG to provide services to Blue Shield's HMO
11 members. Naturally, a contract between providers like Saint Agnes and SAMG, on the one hand,
12 and HMOs like Blue Shield, on the other hand, have less value when the providers are prevented
13 from servicing the HMO's members.

14 33. Plaintiff is informed and believes that the specific allegations above, which show
15 interference by Santé, are just the tip of the iceberg in the improper communications by Santé to
16 intimidate primary care physicians and specialists not to proceed with contracts with SAMG or the
17 First Choice entities, and that the examples plaintiff has learned about reflect a broader pattern and
18 practice of similar conduct by Santé. The very nature of the intimidation tactics that plaintiff has
19 uncovered suggests that many physicians who have been subjected to it may be afraid to speak up
20 to confirm the full extent of Santé's campaign. Accordingly, Santé is more likely than plaintiff to
21 know additional facts reflecting the full scope of the intimidation efforts.

22 34. Nevertheless, Santé's known conduct has caused damage not only to patients'
23 rights, but also to the rights of doctors to determine the best hospital and services for their patients,
24 and to contract freely pursuant to their non-exclusivity agreements, so as to harm Saint Agnes'
25 ability to provide services to patients in the HMO market. This is causing Saint Agnes continuing
26 irreparable harm.

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28 ///

FIRST CAUSE OF ACTION

(For Intentional Interference with Contract – Blue Shield Agreements)

35. Plaintiff incorporates all allegations set forth in the above paragraphs.

36. Saint Agnes has entered into valid and binding written provider agreements with Blue Shield, to provide Commercial and Medicare HMO services to Blue Shield members.

37. Plaintiff is informed and believes that Santé knew of these contracts with Blue Shield.

38. Plaintiff is informed and believes that Santé knew that its conduct, alleged above, of interfering with the ability of SAMG and the First Choice entities to contract with primary care physicians and specialists, was certain or substantially certain to interfere with plaintiff's contracts with Blue Shield. Without primary care physicians and specialists, Blue Shield members who live and work in the Fresno area cannot or will not select SAMG or First Choice for HMO services, since those entities would lack the ability to provide HMO services to the members at Saint Agnes when HMO hospital services are needed. The value of Saint Agnes' provider contracts with Blue Shield depends on primary care physicians being able to sign up to provide services to Blue Shield HMO members, those primary care physicians being able to refer HMO members to specialists when needed, and those primary care physicians and specialists, along with their patients, being able to use Saint Agnes for hospital care when needed. Therefore, by preventing the recruitment of primary care physicians and specialists, Santé has materially undercut the value of the contracts between Saint Agnes and Blue Shield.

39. Santé's conduct has in fact and proximately caused damage to plaintiff in amounts to be proven at trial.

40. California Civil Code § 3294(a) provides that punitive damages are appropriate where the defendant engaged in conduct demonstrating oppression, fraud or malice. Plaintiff is informed and believes that Santé's campaign was done with conscious and deliberate disregard for the rights of plaintiff under its contract with Blue Shield, and was done with a willingness to harass, annoy or injure plaintiff. Plaintiff is informed and believes that Santé's conduct was authorized and/or ratified by Santé's officers, directors, and/or managing agents. As set forth

1 above, Defendant's conduct was willful, oppressive, fraudulent and malicious. Accordingly,
2 defendants are liable for punitive damages to plaintiff.

3
4 **SECOND CAUSE OF ACTION**

5 **(For Intentional Interference with Contract – CPN Agreement)**

6 41. Plaintiff incorporates all allegations set forth in the above paragraphs.

7 42. Saint Agnes entered into a valid and binding contract with CPN, as alleged above.

8 43. Saint Agnes is informed and believes that Santé knew of the contract between Saint
9 Agnes and CPN.

10 44. Saint Agnes is informed and believes that Santé has engaged in intentional acts
11 designed to disrupt its contractual relationship with CPN. As explained in detail above, through a
12 campaign of threats and intimidation, Santé disrupted contracts between the First Choice entities,
13 on the one hand, and primary care physicians and specialists, on the other hand; and further,
14 disrupted the ability of the First Choice entities to recruit additional primary care physicians and
15 specialists, by threatening primary care physicians and specialists with the loss of the their patients
16 through improper means.

17 45. Saint Agnes is informed and believes that the threats alleged above have caused
18 physicians to back out of signed contracts with one or both of the First Choice entities, and caused
19 other physicians not to sign up with either of the First Choice entities.

20 46. Santé's conduct has in fact and proximately caused damages to Saint Agnes in
21 amounts to be proven at trial.

22 47. California Civil Code § 3294(a) provides that punitive damages are appropriate
23 where the defendant engaged in conduct demonstrating oppression, fraud or malice. Defendant's
24 campaign was done with conscious and deliberate disregard for the rights of Saint Agnes, and was
25 done with a willingness to harass, annoy or injure Saint Agnes. As set forth above, plaintiff is
26 informed and believes that Santé's conduct was willful, oppressive, fraudulent and malicious.
27 Plaintiff is informed and believes that Santé's conduct was authorized and/or ratified by Santé's
28 officers, directors, and/or managing agents. Accordingly, defendant is liable for punitive damages

1 to plaintiff.

3 **THIRD CAUSE OF ACTION**

4 **(For Intentional Interference with Prospective Economic Advantage)**

5 48. Plaintiff incorporates all allegations set forth in the paragraphs above.

6 49. There are multiple different prospective economic relationships which would have
7 resulted in an economic benefit to plaintiff absent the unlawful conduct by Santé that is alleged
8 above. Examples of each of these are set forth below:

9 50. First, Saint Agnes has a prospective economic relationship with First Choice, for
10 payment by First Choice in connection with rendering services to HMO members of all of the
11 HMOs that are contracted with First Choice, were First Choice able to offer HMO services to
12 HMO members in the Fresno area. First Choice only can render hospital services at Saint Agnes
13 to members of HMOs if First Choice has a network of physicians to sign up the HMO members
14 and render those services. A hospital cannot render services without a physician, and Santé has
15 prevented both of the First Choice entities from having the physicians necessary to render such
16 hospital services.

17 51. Second, Saint Agnes has a prospective economic relationship with SAMG, were
18 SAMG able to offer HMO services to HMO members in the Fresno area. But SAMG only can
19 render hospital services at Saint Agnes to members of HMOs if SAMG has a network of
20 physicians to sign up the HMO members and render those services. A hospital cannot render
21 services without a physician, and Santé has prevented SAMG from having the physicians
22 necessary to render such hospital services.

23 52. Third, an economic relationship exists between Saint Agnes and the HMO health
24 plans that operate in the Fresno area. This includes, without limitation, Blue Shield. Specifically,
25 Saint Agnes and Blue Shield were negotiating an expanded relationship that would have been
26 more lucrative for Saint Agnes. However, due to Santé's campaign of threats, SAMG has not been
27 able to recruit specialists in several specialty areas of medical practice. For that reason, Blue
28 Shield told Saint Agnes that Blue Shield would not agree to the expanded relationship for now.

1 This is damaging to Saint Agnes because such an expanded contractual relationship would have
2 provided Saint Agnes with greater access to treating Blue Shield patients for non-emergency
3 services. Likewise, there is an economic relationship between Saint Agnes and the other HMOs
4 that are contracted with one or more of the First Choice entities, since those HMOs could allow
5 their members to get services at Saint Agnes if the First Choice entities were not being impeded
6 through Santé's wrongful means from signing up physicians in the Fresno area.

7 53. As a medical group, Santé is keenly aware of these prospective economic
8 relationships regarding HMO services. Plaintiff is informed and believes that Santé has
9 demonstrated this knowledge in the course of its own business activities, and clearly demonstrated
10 knowledge in the extensive efforts that Santé has engaged in for the purposes of attempting to
11 destroy the ability of competitors to provide Fresno area residents with the option to choose other
12 medical groups and hospital providers for HMO services.

13 54. Santé knew that the interference with plaintiff's economic relations was certain or
14 substantially certain to occur as a result of its actions.

15 55. Santé engaged in intentionally wrongful acts designed to disrupt the economic
16 relationships described above. Santé's interference conduct was independently wrongful of the
17 interference itself, in several ways, as described below:

18 **Independent Wrongful Act #1: Breach Of Contract**

19 56. Santé and physicians with whom it is affiliated entered into written contracts
20 governing their relationship, known as "physician agreements." Plaintiff is informed and believes
21 that Santé materially breached these contracts by failing to comply with the provision expressly
22 making the contracts non-exclusive.

23 57. Furthermore, for Santé to take away from primary care physicians all of the HMO
24 members who have selected those primary care physicians, and to preclude primary care
25 physicians from referring any HMO members to specialists, also breaches the contracts by
26 depriving these contracted physicians of one of the main benefits that these contracts convey.
27 Specifically, contracts between physicians and a medical group like Santé primarily benefit the
28 physicians by giving those physicians access to HMO members through Santé of HMO health

1 plans that have signed contracts with Santé. These HMO-based provider service agreements
2 derive value because they contemplate a sizable population of HMO members who will be able to
3 sign up with the primary care physicians, and who the primary care physicians will be able to refer
4 to the specialists. Accordingly, there is little if any value to the contracts that these physicians
5 have with Santé absent the ability of HMO members to select and remain with the primary care
6 physicians, and be referred by the primary care physicians to the specialists. Plaintiff is informed
7 and believes that this conduct by Santé constitutes an additional breach, of either the express terms
8 of the contracts with the physicians or the implied covenant of good faith and fair dealing with
9 regard to implementation of those express contractual terms.

10 58. Plaintiff is informed and believes that the primary care physicians and specialists
11 have complied with their respective contracts with Santé, and are being harmed by Santé's
12 breaches.

13 **Independent Wrongful Act #2: Fraud**

14 59. As alleged above, plaintiff is informed and believes that Santé has materially
15 misrepresented to the threatened primary care physicians and specialists that their respective
16 contracts supposedly preclude each of them from treating HMO members through entities other
17 than Santé. Plaintiff is informed and believes that the contracts Santé has with its physicians are
18 expressly non-exclusive agreements, that Santé knows this fact, and that Santé nonetheless has
19 told its physicians differently, for the purposes of causing physicians who have contracted with
20 others to back out of those contracts, and causing physicians who otherwise were going to contract
21 with those other entities not to proceed. Santé's fraud has caused harm to the primary care
22 physicians and specialists, by causing those who did contract with others to lose the benefits of
23 those contracts, and causing those who were intimidated against contracting with the others from
24 getting the benefits of proceeding with those contracts.

25 **Independent Wrongful Act #3: Unfair Competition**

26 60. Defendant's actions as set forth above constitute an unlawful, unfair and fraudulent
27 business practice in violation of Business and Professions Code Section 17200 *et seq.*, as follows:

28 ///

Defendant's Campaign Is Unlawful

61. Santé's campaign of threats and intimidation is unlawful under multiple California statutes, as well as under California common law, and violates the public policy of the state of California, in multiple ways:

Unlawful Act #1: Due Process Violation

62. Santé's redirecting members away from its primary care physicians and specialists constitutes constructive termination of these physicians' contracts without due process, in violation of California law. The California Supreme Court long ago recognized that the public has a substantial interest in the relationship between physicians, patients and insurers in the context of managed care organizations. *Potvin v. Metropolitan Life Ins. Co.*, 22 Cal.4th 1060, 1070-71 (2000). Where, as here, a physician's termination would impair his or her ability to practice medicine in the relevant geographic area, a common law right of fair procedure exists. Santé has stated that it is taking away all of the physicians' patients – and essentially is terminating their existing medical practices – merely because they are exercising their contractual right to join another medical group or other entity. Santé has done so without affording the physicians the due process required under the law. Moreover, Santé has effectively foreclosed physicians from affiliating with St. Agnes without affording them the required due process. *See Potvin*, 22 Cal.4th at 1070-71; *Palm Medical Group, Inc. v. State Compensation Ins. Fund*, 161 Cal.App.4th 206 (2008).

Unlawful Act #2: Violation of Agreements with HMOs to Comply with Knox-Keene Act

63. Plaintiff is informed and believes that Santé's contracts with HMOs that are governed by the Knox-Keene Act require Santé to comply with all of the obligations that it and the HMOs have under the Knox-Keene Act to the extent that Santé has been contracted by the HMO to perform obligations that the HMOs have under the Knox-Keene Act. Plaintiff is informed and believes that this type of agreement is routinely set forth in contracts between HMOs regulated under the Knox-Keene Act and medical groups like Santé. Plaintiff is informed and believes that most if not all of the HMOs that have contracts with Santé are governed by the Knox-Keene Act.

64. Santé's actions are contrary to various provisions of the Knox-Keene Act. For

1 instance, the Knox-Keene Act's Health Care Providers' Bill of Rights, Cal. Health & Safety Code
2 § 1375.7, precludes unilaterally amending contracts with physicians, requiring that amendments
3 be negotiated. In contrast, Santé's actions would effectively unilaterally amend its non-exclusive
4 contracts with the physicians into exclusive contracts, without negotiating this amendment with
5 the physicians.

6
7 Defendant's Campaign Is Fraudulent Under the UCL

8 65. Santé's campaign is fraudulent because it is rooted in misrepresentations made to
9 physicians regarding their ability to join other entities, as though those physicians have exclusive
10 contracts, when plaintiff is informed and believes that they expressly have only non-exclusive
11 agreements. As set forth above, Santé has represented to physicians that they are somehow
12 obligated to have all HMO members access the physicians solely through Santé, and that if these
13 physicians let any HMO members access them through others, Santé will redirect all HMO
14 patients away.

15 66. Santé is falsely representing its physician contracts in a deceptive manner which is
16 likely to mislead these physicians. Indeed, plaintiff is informed and believes that physicians
17 actually have been misled into thinking that the physicians were contractually required to sever
18 and avoid also contracting with others, like SAMG and the First Choice entities.

19 67. As alleged above, plaintiff is informed and believes that there is no requirement for
20 physicians contracted with Santé to maintain an exclusive relationship with Santé, and there are no
21 grounds upon which Santé could lawfully redirect the HMO members from the physicians for
22 exercising the physicians' contractual right to join other entities.

23
24 Defendant's Campaign Is Unfair

25 68. Santé's campaign of threats and intimidation is unfair because it seeks to drive out
26 others from rendering services in the Fresno area to HMO members, including SAMG, First
27 Choice, and Saint Agnes. Indeed, Santé's aim is a direct assault on the existence of competition in
28 the HMO market for the Fresno area. Santé's practice is also injurious to physicians, whose

1 contracting choices are being improperly impeded, and to consumers, who are being prevented
2 from selecting the physician and hospital of their choice for HMO care.

3 69. Moreover, Santé's campaign is creating substantial harm by preventing HMO
4 patients' physicians from affiliating with the hospital of their choice, or with multiple hospitals
5 should the physicians wish to offer more choice to their HMO patients, and also by precluding
6 HMO patients from receiving care from the physician and hospital of their choice. There is no
7 corresponding utility or benefit to the community from Santé's efforts to suppress competition in
8 the HMO market.

9
10 Plaintiff Is Suffering Injury-In-Fact

11 70. As set forth above, plaintiff is being injured-in-fact by Santé's assault on HMO
12 competition through its threats to physicians who dare to enter into contracts with any competing
13 entities. Santé's conduct will prevent and impede Saint Agnes from rendering health care services
14 to HMO members of health plans in the Fresno area. This has a direct financial impact on Saint
15 Agnes, which cannot get reimbursed for services to HMO members that it is being prevented from
16 rendering. This also has interfered with the contracts that Saint Agnes entered into with Blue
17 Shield, and impeded its ability to enter into a more lucrative expanded relationship with Blue
18 Shield. Likewise, Saint Agnes' property interest in its contract with CPN has been diminished,
19 and it has lost the opportunity for patient referrals and revenue from HMO members delegated to
20 CPN.

21
22 FOURTH CAUSE OF ACTION

23 (For Negligent Interference with Prospective Economic Advantage)

24 71. Plaintiff incorporates all allegations set forth in the paragraphs above.

25 72. There are multiple different prospective economic relationships which would have
26 resulted in an economic benefit to plaintiff absent the unlawful conduct by Santé that is alleged
27 above. Examples of each of these are set forth below:

28 73. First, Saint Agnes has a prospective economic relationship with First Choice, for

1 payment by First Choice in connection with rendering services to HMO members of all of the
2 HMOs that are contracted with First Choice, were First Choice able to offer HMO services to
3 HMO members in the Fresno area. First Choice only can render hospital services at Saint Agnes
4 to members of HMOs if First Choice has a network of physicians to sign up the HMO members
5 and render those services. A hospital cannot render services without a physician, and Santé has
6 prevented both of the First Choice entities from having the physicians necessary to render such
7 hospital services.

8 74. Second, Saint Agnes has a prospective economic relationship with SAMG, were
9 SAMG able to offer HMO services to HMO members in the Fresno area. But SAMG only can
10 render hospital services at Saint Agnes to members of HMOs if SAMG has a network of
11 physicians to sign up the HMO members and render those services. A hospital cannot render
12 services without a physician, and Santé has prevented SAMG from having the physicians
13 necessary to render such hospital services.

14 75. Third, an economic relationship exists between Saint Agnes and the HMO health
15 plans that operate in the Fresno area. This includes, without limitation, Blue Shield. Specifically,
16 Saint Agnes and Blue Shield were negotiating an expanded relationship that would have been
17 more lucrative for Saint Agnes. However, due to Santé's campaign of threats, SAMG has not been
18 able to recruit specialists in several specialty areas of medical practice. For that reason, Blue
19 Shield told Saint Agnes that Blue Shield would not agree to the expanded relationship for now.
20 This is damaging to Saint Agnes because such an expanded contractual relationship would have
21 provided Saint Agnes with greater access to treating Blue Shield patients for non-emergency
22 services. Likewise, there is an economic relationship between Saint Agnes and the other HMOs
23 that are contracted with one or more of the First Choice entities, since those HMOs could allow
24 their members to get services at Saint Agnes if the First Choice entities were not being impeded
25 through Santé's wrongful means from signing up physicians in the Fresno area.

26 76. As a medical group, Santé is keenly aware of these prospective economic
27 relationships regarding HMO services. Plaintiff is informed and believes that Santé has
28 demonstrated this knowledge in the course of its own business activities, and clearly demonstrated

1 knowledge in the extensive efforts that Santé has engaged in for the purposes of attempting to
2 destroy the ability of competitors to provide Fresno area residents with the option to choose other
3 medical groups and hospital providers for HMO services.

4 77. Santé knew that the interference with plaintiff's economic relations was certain or
5 substantially certain to occur as a result of its failure to act with reasonable care.

6 78. Santé failed to act with reasonable care in performing the acts described above.
7 Santé's interference conduct was independently wrongful of the interference itself, in several
8 ways, as described below:

9 **Independent Wrongful Act #1: Breach Of Contract**

10 79. Santé and physicians with whom it is affiliated entered into written contracts
11 governing their relationship, known as "physician agreements." Plaintiff is informed and believes
12 that Santé materially breached these contracts by failing to comply with the provision expressly
13 making the contracts non-exclusive.

14 80. Furthermore, for Santé to take away from primary care physicians all of the HMO
15 members who have selected those primary care physicians, and to preclude primary care
16 physicians from referring any HMO members to specialists, also breaches the contracts by
17 depriving these contracted physicians of one of the main benefits that these contracts convey.
18 Specifically, contracts between physicians and a medical group like Santé primarily benefit the
19 physicians by giving those physicians access to HMO members through Santé of HMO health
20 plans that have signed contracts with Santé. These HMO-based provider service agreements
21 derive value because they contemplate a sizable population of HMO members who will be able to
22 sign up with the primary care physicians, and who the primary care physicians will be able to refer
23 to the specialists. Accordingly, there is little if any value to the contracts that these physicians
24 have with Santé absent the ability of HMO members to select and remain with the primary care
25 physicians, and be referred by the primary care physicians to the specialists. Plaintiff is informed
26 and believes that this conduct by Santé constitutes an additional breach, of either the express terms
27 of the contracts with the physicians or the implied covenant of good faith and fair dealing with
28 regard to implementation of those express contractual terms.

1 81. Plaintiff is informed and believes that the primary care physicians and specialists
2 have complied with their respective contracts with Santé, and are being harmed by Santé's
3 breaches.

4 **Independent Wrongful Act #2: Fraud**

5 82. As alleged above, plaintiff is informed and believes that Santé has materially
6 misrepresented to the threatened primary care physicians and specialists that their respective
7 contracts supposedly preclude each of them from treating HMO members through entities other
8 than Santé. Plaintiff is informed and believes that the contracts Santé has with its physicians are
9 expressly non-exclusive agreements, that Santé knows this fact, and that Santé nonetheless has
10 told its physicians differently, for the purposes of causing physicians who have contracted with
11 others to back out of those contracts, and causing physicians who otherwise were going to contract
12 with those other entities not to proceed. Santé's fraud has caused harm to the primary care
13 physicians and specialists, by causing those who did contract with others to lose the benefits of
14 those contracts, and causing those who were intimidated against contracting with the others from
15 getting the benefits of proceeding with those contracts.

16 **Independent Wrongful Act #3: Unfair Competition**

17 83. Defendant's actions as set forth above constitute an unlawful, unfair and fraudulent
18 business practice in violation of Business and Professions Code Section 17200 *et seq.*, as follows:

19
20 Defendant's Campaign Is Unlawful

21 84. Santé's campaign of threats and intimidation is unlawful under multiple California
22 statutes, as well as under California common law, and violates the public policy of the state of
23 California, in multiple ways:

24 **Unlawful Act #1: Due Process Violation**

25 85. Santé's redirecting members away from its primary care physicians and specialists
26 constitutes constructive termination of these physicians' contracts without due process, in violation
27 of California law. The California Supreme Court long ago recognized that the public has a
28 substantial interest in the relationship between physicians, patients and insurers in the context of

1 managed care organizations. *Potvin v. Metropolitan Life Ins. Co.*, 22 Cal.4th 1060, 1070-71
2 (2000). Where, as here, a physician's termination would impair his or her ability to practice
3 medicine in the relevant geographic area, a common law right of fair procedure exists. Santé has
4 stated that it is taking away all of the physicians' patients – and essentially is terminating their
5 existing medical practices – merely because they are exercising their contractual right to join
6 another medical group or other entity. Santé has done so without affording the physicians the due
7 process required under the law. Moreover, Santé has effectively foreclosed physicians from
8 affiliating with St. Agnes without affording them the required due process. *See Potvin*, 22 Cal.4th
9 at 1070-71; *Palm Medical Group, Inc. v. State Compensation Ins. Fund*, 161 Cal.App.4th 206
10 (2008).

11 **Unlawful Act #2: Violation of Agreements with HMOs to Comply with Knox-Keene Act**

12 86. Plaintiff is informed and believes that Santé's contracts with HMOs that are
13 governed by the Knox-Keene Act require Santé to comply with all of the obligations that it and the
14 HMOs have under the Knox-Keene Act to the extent that Santé has been contracted by the HMO
15 to perform obligations that the HMOs have under the Knox-Keene Act. Plaintiff is informed and
16 believes that this type of agreement is routinely set forth in contracts between HMOs regulated
17 under the Knox-Keene Act and medical groups like Santé. Plaintiff is informed and believes that
18 most if not all of the HMOs that have contracts with Santé are governed by the Knox-Keene Act.

19 87. Santé's actions are contrary to various provisions of the Knox-Keene Act. For
20 instance, the Knox-Keene Act's Health Care Providers' Bill of Rights, Cal. Health & Safety Code
21 § 1375.7, precludes unilaterally amending contracts with physicians, requiring that amendments
22 be negotiated. In contrast, Santé's actions would effectively unilaterally amend its non-exclusive
23 contracts with the physicians into exclusive contracts, without negotiating this amendment with
24 the physicians.

25
26 Defendant's Campaign Is Fraudulent Under the UCL

27 88. Santé's campaign is fraudulent because it is rooted in misrepresentations made to
28 physicians regarding their ability to join other entities, as though those physicians have exclusive

1 contracts, when plaintiff is informed and believes that they expressly have only non-exclusive
2 agreements. As set forth above, Santé has represented to physicians that they are somehow
3 obligated to have all HMO members access the physicians solely through Santé, and that if these
4 physicians let any HMO members access them through others, Santé will redirect all HMO
5 patients away.

6 89. Santé is falsely representing its physician contracts in a deceptive manner which is
7 likely to mislead these physicians. Indeed, plaintiff is informed and believes that physicians
8 actually have been misled into thinking that the physicians were contractually required to sever
9 and avoid also contracting with others, like SAMG and the First Choice entities.

10 90. As alleged above, plaintiff is informed and believes that there is no requirement for
11 physicians contracted with Santé to maintain an exclusive relationship with Santé, and there are no
12 grounds upon which Santé could lawfully redirect the HMO members from the physicians for
13 exercising the physicians' contractual right to join other entities.

14
15 Defendant's Campaign Is Unfair

16 91. Santé's campaign of threats and intimidation is unfair because it seeks to drive out
17 others from rendering services in the Fresno area to HMO members, including SAMG, First
18 Choice, and Saint Agnes. Indeed, Santé's aim is a direct assault on the existence of competition in
19 the HMO market for the Fresno area. Santé's practice is also injurious to physicians, whose
20 contracting choices are being improperly impeded, and to consumers, who are being prevented
21 from selecting the physician and hospital of their choice for HMO care.

22 92. Moreover, Santé's campaign is creating substantial harm by preventing HMO
23 patients' physicians from affiliating with the hospital of their choice, or with multiple hospitals
24 should the physicians wish to offer more choice to their HMO patients, and also by precluding
25 HMO patients from receiving care from the physician and hospital of their choice. There is no
26 corresponding utility or benefit to the community from Santé's efforts to suppress competition in
27 the HMO market.

28 ///

1 Plaintiff Is Suffering Injury-In-Fact

2 93. As set forth above, plaintiff is being injured-in-fact by Santé's assault on HMO
3 competition through its threats to physicians who dare to enter into contracts with any competing
4 entities. Santé's conduct will prevent and impede Saint Agnes from rendering health care services
5 to HMO members of health plans in the Fresno area. This has a direct financial impact on Saint
6 Agnes, which cannot get reimbursed for services to HMO members that it is being prevented from
7 rendering. This also has interfered with the contracts that Saint Agnes entered into with Blue
8 Shield, and impeded its ability to enter into a more lucrative expanded relationship with Blue
9 Shield. Likewise, Saint Agnes' property interest in its contract with CPN has been diminished,
10 and it has lost the opportunity for patient referrals and revenue from HMO members delegated to
11 CPN.

12
13 FIFTH CAUSE OF ACTION

14 (Unfair Competition)

15 94. Defendant's actions as set forth above constitute an unlawful, unfair and fraudulent
16 business practice in violation of Business and Professions Code Section 17200 *et seq.*, as follows:

17
18 Defendant's Campaign Is Unlawful

19 95. Santé's campaign of threats and intimidation is unlawful under multiple California
20 statutes, as well as under California common law, and violates the public policy of the state of
21 California, in multiple ways:

22 **Unlawful Act #1: Due Process Violation**

23 96. Santé's redirecting members away from its primary care physicians and specialists
24 constitutes constructive termination of these physicians' contracts without due process, in violation
25 of California law. The California Supreme Court long ago recognized that the public has a
26 substantial interest in the relationship between physicians, patients and insurers in the context of
27 managed care organizations. *Potvin v. Metropolitan Life Ins. Co.*, 22 Cal.4th 1060, 1070-71
28 (2000). Where, as here, a physician's termination would impair his or her ability to practice

1 medicine in the relevant geographic area, a common law right of fair procedure exists. Santé has
2 stated that it is taking away all of the physicians' patients – and essentially is terminating their
3 existing medical practices – merely because they are exercising their contractual right to join
4 another medical group or other entity. Santé has done so without affording the physicians the due
5 process required under the law. Moreover, Santé has effectively foreclosed physicians from
6 affiliating with St. Agnes without affording them the required due process. *See Potvin*, 22 Cal.4th
7 at 1070-71; *Palm Medical Group, Inc. v. State Compensation Ins. Fund*, 161 Cal.App.4th 206
8 (2008).

9 **Unlawful Act #2: Violation of Agreements with HMOs to Comply with Knox-Keene Act**

10 97. Plaintiff is informed and believes that Santé's contracts with HMOs that are
11 governed by the Knox-Keene Act require Santé to comply with all of the obligations that it and the
12 HMOs have under the Knox-Keene Act to the extent that Santé has been contracted by the HMO
13 to perform obligations that the HMOs have under the Knox-Keene Act. Plaintiff is informed and
14 believes that this type of agreement is routinely set forth in contracts between HMOs regulated
15 under the Knox-Keene Act and medical groups like Santé. Plaintiff is informed and believes that
16 most if not all of the HMOs that have contracts with Santé are governed by the Knox-Keene Act.

17 98. Santé's actions are contrary to various provisions of the Knox-Keene Act. For
18 instance, the Knox-Keene Act's Health Care Providers' Bill of Rights, Cal. Health & Safety Code
19 § 1375.7, precludes unilaterally amending contracts with physicians, requiring that amendments
20 be negotiated. In contrast, Santé's actions would effectively unilaterally amend its non-exclusive
21 contracts with the physicians into exclusive contracts, without negotiating this amendment with
22 the physicians.

23
24 Defendant's Campaign Is Fraudulent Under the UCL

25 99. Santé's campaign is fraudulent because it is rooted in misrepresentations made to
26 physicians regarding their ability to join other entities, as though those physicians have exclusive
27 contracts, when plaintiff is informed and believes that they expressly have only non-exclusive
28 agreements. As set forth above, Santé has represented to physicians that they are somehow

1 obligated to have all HMO members access the physicians solely through Santé, and that if these
2 physicians let any HMO members access them through others, Santé will redirect all HMO
3 patients away.

4 100. Santé is falsely representing its physician contracts in a deceptive manner which is
5 likely to mislead these physicians. Indeed, plaintiff is informed and believes that physicians
6 actually have been misled into thinking that the physicians were contractually required to sever
7 and avoid also contracting with others, like SAMG and the First Choice entities.

8 101. As alleged above, plaintiff is informed and believes that there is no requirement for
9 physicians contracted with Santé to maintain an exclusive relationship with Santé, and there are no
10 grounds upon which Santé could lawfully redirect the HMO members from the physicians for
11 exercising the physicians' contractual right to join other entities.

12
13 Defendant's Campaign Is Unfair

14 102. Santé's campaign of threats and intimidation is unfair because it seeks to drive out
15 others from rendering services in the Fresno area to HMO members, including SAMG, First
16 Choice, and Saint Agnes. Indeed, Santé's aim is a direct assault on the existence of competition in
17 the HMO market for the Fresno area. Santé's practice is also injurious to physicians, whose
18 contracting choices are being improperly impeded, and to consumers, who are being prevented
19 from selecting the physician and hospital of their choice for HMO care.

20 103. Moreover, Santé's campaign is creating substantial harm by preventing HMO
21 patients' physicians from affiliating with the hospital of their choice, or with multiple hospitals
22 should the physicians wish to offer more choice to their HMO patients, and also by precluding
23 HMO patients from receiving care from the physician and hospital of their choice. There is no
24 corresponding utility or benefit to the community from Santé's efforts to suppress competition in
25 the HMO market.

26
27 Plaintiff Is Suffering Injury-In-Fact

28 104. As set forth above, plaintiff is being injured-in-fact by Santé's assault on HMO

1 competition through its threats to physicians who dare to enter into contracts with any competing
2 entities. Santé's conduct will prevent and impede Saint Agnes from rendering health care services
3 to HMO members of health plans in the Fresno area. This has a direct financial impact on Saint
4 Agnes, which cannot get reimbursed for services to HMO members that it is being prevented from
5 rendering. This also has interfered with the contracts that Saint Agnes entered into with Blue
6 Shield, and impeded its ability to enter into a more lucrative expanded relationship with Blue
7 Shield. Likewise, Saint Agnes' property interest in its contract with CPN has been diminished,
8 and it has lost the opportunity for patient referrals and revenue from HMO members delegated to
9 CPN.

11 UCL Injunctive Relief Is Necessary And Appropriate

12 105. Pursuant to Sections 17200 and 17203 of the California Business and Professions
13 Code, plaintiff is entitled to an order enjoining Santé from its unlawful, fraudulent and unfair acts.

14 106. The main annual open enrollment period for HMO plans is now under way. At the
15 same time, physicians are now in the process of selecting the medical groups or other entities with
16 which they will associate for HMO services. The deadline for patients and physicians for the next
17 calendar year enrollment is fast approaching. In light of the impending deadline, Santé is
18 continuing to wage its campaign against all physicians whom it believes have signed up with any
19 medical group other than Santé or are interested in doing so. Unless enjoined from doing so well
20 before the end of the open enrollment period, Santé's campaign will inflict irreparable harm upon
21 plaintiff.

22 107. Saint Agnes seeks an injunction preventing Santé from taking any acts that would,
23 through unlawful means, prevent physicians from joining SAMG, First Choice, and any other
24 entity that is willing to refer HMO members to Saint Agnes. The appropriate injunctive relief
25 includes, without limitation:

26 ///

27 ///

28 ///

- 1 a. Prohibiting Santé from threatening physicians with non-exclusive contracts
2 if those physicians contract with other entities to provide HMO services to
3 patients through those other entities. This includes, without limitation,
4 threatening:
5 (i) the loss of any existing HMO members assigned to or being treated by
6 them,
7 (ii) the loss of future referrals of HMO members from being assigned to or
8 being treated by them,
9 (iii) the loss of the ability of HMO members to select as their primary care
10 physician any physician contracted with Santé, and/or
11 (iv) the loss of the ability of primary care physicians contracted with Santé
12 to refer HMO members to specialists contracted with Santé.
13 b. Requiring Santé to send corrective notices to its non-exclusive physicians
14 that their contracts do not require them to elect between Santé and other
15 entities for HMO patients.
16

17 **SIXTH CAUSE OF ACTION**

18 **(For Declaratory Relief)**

19 108. Plaintiff incorporates all allegations set forth in the paragraphs above.

20 109. To the extent that a controversy exists between Saint Agnes and Santé as to
21 whether physicians contracted with Santé on a non-exclusive basis may lawfully join more than
22 one entity through which those physicians can sign up HMO members, Saint Agnes seeks a
23 declaration that Santé may not prevent or impede those physicians from also contracting with First
24 Choice, SAMG or any other entities that refer members to Saint Agnes.

25 ///

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28 ///

1 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

2 1. For declaratory and injunctive relief, as described above.

3 2. For compensatory damages in an amount to be proved at trial.

4 3. For pre-judgment interest and post-judgment interest at the highest interest rates
5 applicable under the law.

6 4. For punitive damages from Defendant on the causes of action alleged above giving
7 rise to a right to punitive damages; and

8 5. For such other relief as the Court deems just and appropriate.

9
10 DATED: October 22, 2013

HOOPER, LUNDY & BOOKMAN, P.C.

11
12 By: Glenn Solomon / PJB
13 GLENN E. SOLOMON
14 Attorneys for Plaintiff Saint Agnes Medical Center
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